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硕士学位论文

刑罚轻缓化视野下的老年人犯罪处罚研究

Studies on Elderly Criminal Penalties

From The Perspective Of Mitigation Of Penalty

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内容摘要

随着人口老龄化的发展，老年人犯罪日益增多，成为各国普遍关注的问题。经济和科技的飞速发展导致我国在不成熟的社会阶段进入到人口老龄化的时代，与此同时的老年人犯罪也在同步增长，引起了立法部门的重视。《中华人民共和国刑法修正案（八）》对老年人犯罪给予了一定程度的关注，其中重点是就老年人犯罪规定了更为宽松的量刑标准。对老年人犯罪给予轻缓化处罚，有着深厚的现实依据、理论基础和法律依据，同时也具有与时俱进的意义，符合构建和谐社会的主旨，关乎到维护社会稳定、贯彻老年人的人权保障问题，因此本文选定了该题目。除引言和结语外，本文包括四章：

第一章主要阐述老年人犯罪的相关基础概念。主要包括三节。第一节介绍老年人犯罪的概念确定过程及其存在的争议；第二节介绍老年人犯罪的理论争讼；第三节介绍老年人犯罪的特点。

第二章主要阐述老年人犯罪处罚轻缓化的依据问题。主要包括三节。第一节介绍老年人犯罪轻缓化处罚的现实依据，该部分从老年人自身着手分析，既有国内的横向比较也有与国外的纵向比较，力求分析的全面性；第二节介绍老年人犯罪轻缓化处罚的理论基础，该部分从刑罚的目的、刑法的人道主义和刑法的经济性以及民众的文化感知四个方面分析对老年人犯罪轻缓化处罚的理论基础；第三节阐述老年人犯罪轻缓化处罚的法律依据，该部分对国内外针对老年人犯罪的法条进行了梳理，指出对我国的借鉴意义。这是本文重要的理论部分。

第三章主要介绍对老年人犯罪处罚轻缓化在我国立法和司法中存在的问题。包括两节。第一节介绍刑事立法规定的不足，分别从既存分散性法条和《刑法修正案（八）》中寻找不完善之处；第二节介绍刑事司法的缺陷。

第四章主要介绍对老年人犯罪轻缓化处罚的完善建议。针对我国刑事

立法规定和司法实践中贯彻老年人犯罪轻缓化处罚的不完善之处，本部分分别给出了相对应的完善对策。主要包括两节。第一节介绍刑事立法方面构想，第二节介绍刑事司法方面的完善。这是本文的创新部分。

关键词：老年人犯罪；处罚轻缓化；依据；完善建议

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Abstract

The elderly crime is increasing with the development of the aging population, to be an universal concern of all countries. The rapid development of economy and technology has led our country into the era of population aging in the immature stages of social, at the same time the elderly crime is also synchronized growth, which attracted the attention of the legislative departments. The Criminal Law Amendment (h) has also given a degree of concern to the elderly crime, which provides for more lenient sentencing standards focus on elderly crime. Because of the mitigation of penalty given to the elderly crime has not only profound practical basis、 theoretical foundation and legal basis but also with the times significance, in line with the thrust of building a harmonious society and relating to the protection of human rights in maintaining social stability in China, the title is chosen. Besides introduction and conclusion, this essay includes the following four chapters:

The first chapter is mainly about the basic concepts of elderly crime. It includes three parts. The first one describes the process of concept and the dispute of elderly crime ; the second one describes the theoretical disputes of elderly crime; the last one introduces the characteristics of elderly crime.

The second chapter is mainly about the basis for the elderly criminal penalties gently. It includes three parts. The first one describes the realistic basis of the mitigation of penalty in the elderly crime, which analyzes from the aged itself, compared both domestic and abroad longitudinal comparison, and strive to analyze comprehensively; the second one describes the theoretical basis of the mitigation of penalty in the elderly crime, which analyzes from four aspects :the purpose of penalty, the humanitarian and economy of the criminal law and the culture perception of people; the third one introduces the legal basis

of the mitigation of penalty in the elderly crime, this part combs laws home and abroad and point out the significance for China. This is the important theoretical part of the essay.

The third chapter is mainly about the problems of China's legislation and judicial which about mitigation of penalties of the elderly crime. It includes two parts. The first one describes the inadequacies of criminal legislation, to find imperfections from the existing dispersion law bar and the Criminal Law Amendment (h) respectively ; the second one describes the shortages of the criminal justice.

The forth chapter is mainly about the improving suggestions of mitigation of penalties for the elderly crime. Contrary to the inadequacies in our criminal legislation and justice, this part provides improving policies correspondingly. It includes two parts. The first one introduces the concept of criminal legislation; the second one describes the improving policies in criminal justice. This is the innovative part of the essay.

Key Words: The Elderly Crime; Mitigation Of Penalty; Basis; The Improving Suggestions.

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